

ASSEMBLY BILL

No. 2278

Introduced by Assembly Member Linder

February 18, 2016

An act to amend Section 597.1 of the Penal Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

AB 2278, as introduced, Linder. Animal control: seizure of animals: costs.

(1) Existing law requires a peace officer, humane society officer, or animal control officer to take possession of a stray or abandoned animal, or any animal when the officer has reasonable grounds to believe that very prompt action is required to protect the health and safety of the animal or the health and safety of others. In the case of taking possession of a stray or abandoned animal, existing law requires the officer to provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner.

This bill would allow, but not require, a peace officer, humane society officer, or animal control officer to take possession of an animal in the above circumstances. The bill would require a seizing organization or entity to provide care and treatment for a seized animal until the animal is placed, returned to the owner, or euthanized.

(2) Existing law requires the owner or keeper of an animal that is properly seized to be personally liable to the seizing agency for the cost of the seizure and care of the animal.

This bill would make the owner or keeper of the animal liable to the seizing agency, and if the animal is impounded, to the impounding agency, for the entire cost of the seizure or impoundment of the animal, including costs associated with preparing and posting notices and

sending statements of charges. The bill would require the seizing and impounding agency to present the owner with a statement listing all accrued charges, as provided, either at the postseizure hearing or by personal service, first class mail, or electronic mail, as specified.

(3) Existing law permits the return of an animal only when the owner can demonstrate to the satisfaction of the seizing agency or hearing officer that the owner can and will provide the necessary care for the animal.

This bill would require that if the animal was seized pursuant to a search warrant that the court that issued or adjudicated the warrant give its express approval prior to the release of the animal to the owner.

(4) Existing law makes it a misdemeanor for every owner, driver, or keeper of an animal to permit the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention. Existing law, in cases involving cats and dogs, allows a seizing entity or prosecuting attorney to file a petition in a criminal action to request that the court issue an order forfeiting an animal prior to the final disposition of the case.

This bill would make the above provision applicable to any animal.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597.1 of the Penal Code is amended to
2 read:
3 597.1. (a) (1) ~~Every~~ *Each* owner, driver, or keeper of any
4 animal who permits the animal to be in any building, enclosure,
5 lane, street, square, or lot of any city, county, city and county, or
6 judicial district without proper care and attention is guilty of a
7 misdemeanor. Any peace officer, humane-society officer, or animal
8 control officer ~~shall~~ *may* take possession of the stray or abandoned
9 animal ~~and shall provide care and treatment for the animal~~ until
10 the animal is deemed to be in suitable condition to be returned to
11 the owner. When the officer has reasonable grounds to believe that
12 very prompt action is required to protect the health or safety of the
13 animal or the health or safety of others, the officer ~~shall~~ *may*
14 immediately seize the animal and comply with subdivision (f). In
15 all other cases, the officer shall comply with the provisions of
16 subdivision (g). *If the animal is seized, the seizing organization*

1 *or agency shall provide care and treatment for the animal until*
2 *the animal is placed, returned to the owner, or euthanized.* The
3 full cost of caring for and treating any animal properly seized under
4 this subdivision or pursuant to a search warrant shall constitute a
5 lien on the animal and the animal shall not be returned to its owner
6 until the charges are paid, if the seizure is upheld pursuant to this
7 section.

8 (2) Notwithstanding any other law, if an animal control officer
9 or humane officer, when necessary to protect the health and safety
10 of a wild, stray, or abandoned animal or the health and safety of
11 others, seeks to administer a tranquilizer that contains a controlled
12 substance, as defined in Division 10 (commencing with Section
13 11000) of the Health and Safety Code, to gain control of that
14 animal, he or she may possess and administer that tranquilizer with
15 direct or indirect supervision as determined by a licensed
16 veterinarian, provided that the officer has met each of the following
17 requirements:

18 (A) Has received training in the administration of tranquilizers
19 from a licensed veterinarian. The training shall be approved by
20 the ~~California~~ Veterinary Medical Board.

21 (B) Has successfully completed the firearms component of a
22 course relating to the exercise of police powers, as set forth in
23 Section 832.

24 (C) Is authorized by his or her agency or organization to possess
25 and administer the tranquilizer in accordance with a policy
26 established by the agency or organization and approved by the
27 veterinarian who obtained the controlled substance.

28 (D) Has successfully completed the euthanasia training set forth
29 in Section 2039 of Title 16 of the California Code of Regulations.

30 (E) Has completed a state and federal fingerprinting background
31 check and does not have any drug- or alcohol-related convictions.

32 (b) ~~Every~~ *Each* sick, disabled, infirm, or crippled animal, except
33 a dog or cat, that is abandoned in any city, county, city and county,
34 or judicial district may be killed by the officer if, after a reasonable
35 search, no owner of the animal can be found. It shall be the duty
36 of all peace officers, humane-~~society~~ officers, and animal control
37 officers to cause the animal to be killed or rehabilitated and placed
38 in a suitable home on information that the animal is stray or
39 abandoned. The officer may likewise take charge of any animal,
40 including a dog or cat, that by reason of lameness, sickness,

1 feebleness, or neglect, is unfit for the labor it is performing, or that
2 in any other manner is being cruelly treated, and provide care and
3 treatment for the animal until it is deemed to be in a suitable
4 condition to be returned to the owner. When the officer has
5 reasonable grounds to believe that very prompt action is required
6 to protect the health or safety of an animal or the health or safety
7 of others, the officer shall immediately seize the animal and comply
8 with subdivision (f). In all other cases, the officer shall comply
9 with subdivision (g). The full cost of caring for and treating any
10 animal properly seized under this subdivision or pursuant to a
11 search warrant shall constitute a lien on the animal and the animal
12 shall not be returned to its owner until the charges are paid.

13 (c) (1) Any peace officer, humane-society officer, or animal
14 control officer shall convey all injured cats and dogs found without
15 their owners in a public place directly to a veterinarian known by
16 the officer to be a veterinarian who ordinarily treats dogs and cats
17 for a determination of whether the animal shall be immediately
18 and humanely destroyed or shall be hospitalized under proper care
19 and given emergency treatment.

20 (2) If the owner does not redeem the animal within the locally
21 prescribed waiting period, the veterinarian may personally perform
22 euthanasia on the animal. If the animal is treated and recovers from
23 its injuries, the veterinarian may keep the animal for purposes of
24 adoption, provided the responsible animal control agency has first
25 been contacted and has refused to take possession of the animal.

26 (3) Whenever any animal is transferred to a veterinarian in a
27 clinic, such as an emergency clinic that is not in continuous
28 operation, the veterinarian may, in turn, transfer the animal to an
29 appropriate facility.

30 (4) If the veterinarian determines that the animal shall be
31 hospitalized under proper care and given emergency treatment,
32 the costs of any services that are provided pending the owner's
33 inquiry to the responsible agency, department, or society shall be
34 paid from the dog license fees, fines, and fees for impounding dogs
35 in the city, county, or city and county in which the animal was
36 licensed or, if the animal is unlicensed, shall be paid by the
37 jurisdiction in which the animal was found, subject to the provision
38 that this cost be repaid by the animal's owner. The full cost of
39 caring for and treating any animal seized under this subdivision
40 shall constitute a lien on the animal and the animal shall not be

1 returned to the owner until the charges are paid. No veterinarian
2 shall be criminally or civilly liable for any decision that he or she
3 makes or for services that he or she provides pursuant to this
4 subdivision.

5 (d) An animal control agency that takes possession of an animal
6 pursuant to subdivision (c) shall keep records of the whereabouts
7 of the animal from the time of possession to the end of the animal's
8 impoundment, and those records shall be available for inspection
9 by the public upon request for three years after the date the animal's
10 impoundment ended.

11 (e) Notwithstanding any other provision of this section, any
12 peace officer, humane-society officer, or any animal control officer
13 may, with the approval of his or her immediate superior, humanely
14 destroy any stray or abandoned animal in the field in any case
15 where the animal is too severely injured to move or where a
16 veterinarian is not available and it would be more humane to
17 euthanize the animal.

18 (f) Whenever an officer authorized under this section seizes or
19 impounds an animal based on a reasonable belief that prompt action
20 is required to protect the health or safety of the animal or the health
21 or safety of others, the officer shall, prior to the commencement
22 of any criminal proceedings authorized by this section, provide
23 the owner or keeper of the animal, if known or ascertainable after
24 reasonable investigation, with the opportunity for a postseizure
25 hearing to determine the validity of the seizure or impoundment,
26 or both.

27 (1) The agency shall cause a notice to be affixed to a
28 conspicuous place where the animal was situated or personally
29 deliver a notice of the seizure or impoundment, or both, to the
30 owner or keeper within 48 hours, excluding weekends and holidays.
31 The notice shall include all of the following:

32 (A) The name, business address, and telephone number of the
33 officer providing the notice.

34 (B) A description of the animal seized, including any
35 identification upon the animal.

36 (C) The authority and purpose for the seizure or impoundment,
37 including the time, place, and circumstances under which the
38 animal was seized.

39 (D) A statement that, in order to receive a postseizure hearing,
40 the owner or person authorized to keep the animal, or his or her

1 agent, shall request the hearing by signing and returning an
2 enclosed declaration of ownership or right to keep the animal to
3 the agency providing the notice within 10 days, including weekends
4 and holidays, of the date of the notice. The declaration may be
5 returned by personal delivery or mail.

6 (E) A statement that the full cost of caring for and treating any
7 animal properly seized under this section is a lien on the animal
8 and that the animal shall not be returned to the owner until the
9 charges are paid, and that failure to request or to attend a scheduled
10 hearing shall result in liability for this cost.

11 (2) The postseizure hearing shall be conducted within 48 hours
12 of the request, excluding weekends and holidays. The seizing
13 agency may authorize its own officer or employee to conduct the
14 hearing if the hearing officer is not the same person who directed
15 the seizure or impoundment of the animal and is not junior in rank
16 to that person. The agency may utilize the services of a hearing
17 officer from outside the agency for the purposes of complying with
18 this section.

19 (3) Failure of the owner or keeper, or of his or her agent, to
20 request or to attend a scheduled hearing shall result in a forfeiture
21 of any right to a postseizure hearing or right to challenge his or
22 her liability for costs incurred.

23 (4) The agency, department, or society employing the person
24 who directed the seizure shall be responsible for the costs incurred
25 for caring and treating the animal, if it is determined in the
26 postseizure hearing that the seizing officer did not have reasonable
27 grounds to believe very prompt action, including seizure of the
28 animal, was required to protect the health or safety of the animal
29 or the health or safety of others. If it is determined the seizure was
30 justified, the owner or keeper shall be personally liable to the
31 seizing agency for the full cost of the seizure and care of the
32 animal. The charges for the seizure and care of the animal shall
33 be a lien on the animal. The animal shall not be returned to its
34 owner until the charges are paid and the owner demonstrates to
35 the satisfaction of the seizing agency or the hearing officer that
36 the owner can and will provide the necessary care for the animal.

37 (g) Where the need for immediate seizure is not present and
38 prior to the commencement of any criminal proceedings authorized
39 by this section, the agency shall provide the owner or keeper of
40 the animal, if known or ascertainable after reasonable investigation,

1 with the opportunity for a hearing prior to any seizure or
2 impoundment of the animal. The owner shall produce the animal
3 at the time of the hearing unless, prior to the hearing, the owner
4 has made arrangements with the agency to view the animal upon
5 request of the agency, or unless the owner can provide verification
6 that the animal was humanely destroyed. Any person who willfully
7 fails to produce the animal or provide the verification is guilty of
8 an infraction, punishable by a fine of not less than two hundred
9 fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

10 (1) The agency shall cause a notice to be affixed to a
11 conspicuous place where the animal was situated or personally
12 deliver a notice stating the grounds for believing the animal should
13 be seized under subdivision (a) or (b). The notice shall include all
14 of the following:

15 (A) The name, business address, and telephone number of the
16 officer providing the notice.

17 (B) A description of the animal to be seized, including any
18 identification upon the animal.

19 (C) The authority and purpose for the possible seizure or
20 impoundment.

21 (D) A statement that, in order to receive a hearing prior to any
22 seizure, the owner or person authorized to keep the animal, or his
23 or her agent, shall request the hearing by signing and returning the
24 enclosed declaration of ownership or right to keep the animal to
25 the officer providing the notice within two days, excluding
26 weekends and holidays, of the date of the notice.

27 (E) A statement that the cost of caring for and treating any
28 animal properly seized under this section is a lien on the animal,
29 that any animal seized shall not be returned to the owner until the
30 charges are paid, and that failure to request or to attend a scheduled
31 hearing shall result in a conclusive determination that the animal
32 may properly be seized and that the owner shall be liable for the
33 charges.

34 (2) The preseizure hearing shall be conducted within 48 hours,
35 excluding weekends and holidays, after receipt of the request. The
36 seizing agency may authorize its own officer or employee to
37 conduct the hearing if the hearing officer is not the same person
38 who requests the seizure or impoundment of the animal and is not
39 junior in rank to that person. The agency may utilize the services

1 of a hearing officer from outside the agency for the purposes of
2 complying with this section.

3 (3) Failure of the owner or keeper, or his or her agent, to request
4 or to attend a scheduled hearing shall result in a forfeiture of any
5 right to a preseizure hearing or right to challenge his or her liability
6 for costs incurred pursuant to this section.

7 (4) The hearing officer, after the hearing, may affirm or deny
8 the owner's or keeper's right to custody of the animal and, if
9 reasonable grounds are established, may order the seizure or
10 impoundment of the animal for care and treatment.

11 (h) (1) If any animal is properly seized *or impounded, or both*
12 *seized and impounded*, under this section or pursuant to a search
13 warrant, the owner or keeper shall be personally liable to the
14 seizing agency *or impounding agency, or both the seizing agency*
15 *and the impounding agency*, for ~~the~~ all cost of the seizure *or*
16 *impoundment, or both the seizure and impoundment*, and care of
17 ~~the animal. Further, if the animal, including all costs associated~~
18 *with the preparation and posting of notices and sending of*
19 *statements of charges in accordance with this section.*

20 (2) *An animal lawfully seized pursuant to this section or*
21 *pursuant to a search warrant shall be deemed to be abandoned*
22 *and may be disposed of by the seizing agency if the charges for*
23 *the seizure or impoundment and any other charges permitted under*
24 *this section are not paid within 14 days of the seizure or*
25 *impoundment, or if the owner, within 14 days of notice of*
26 *availability of the animal to be returned, fails to pay charges*
27 *permitted under this section and take possession of the animal, the*
28 ~~animal shall be deemed to have been abandoned and may be~~
29 ~~disposed of by the seizing agency.~~ *animal.*

30 (3) *Notice of charges for the seizure, impoundment, and care*
31 *of the animal pursuant to this section shall be executed as follows:*

32 (A) (i) *If the animal is seized or impounded pursuant to*
33 *subdivision (f), a statement listing all charges that have accrued*
34 *from the time of an animal's seizure or impoundment shall be*
35 *presented to the owner or keeper at the time of the postseizure*
36 *hearing. If no postseizure hearing is held, the statement of charges*
37 *shall be presented to the owner or keeper via personal service,*
38 *first class mail, or electronic mail within two calendar days of the*
39 *expiration of the 10-day period during which an owner or keeper*

1 *may request a hearing specified in subparagraph (D) of paragraph*
2 *(1) of subdivision (f).*

3 *(ii) If the animal is seized or impounded following the issuance*
4 *of a preseizure notice pursuant to subdivision (g), a statement*
5 *listing all charges shall be presented to the owner or keeper via*
6 *personal service, first class mail, or electronic mail no later than*
7 *five calendar days after the date the animal is seized or impounded.*

8 *(iii) If the animal is seized pursuant to a search warrant, a*
9 *statement listing all charges shall be presented to the owner or*
10 *keeper via personal service, first class mail, or electronic mail no*
11 *later than five calendar days after the date the animal is seized or*
12 *impounded.*

13 *(B) If the charges are paid and the animal remains impounded,*
14 *the impounding agency shall continue to present statements of*
15 *charges to the owner or keeper on an ongoing basis via personal*
16 *service, first class mail, or electronic mail. The statements shall*
17 *list all new charges that have accrued during the time of*
18 *impoundment since the last statement was sent or delivered. The*
19 *time period for delivery or mailing the subsequent statements shall*
20 *be at the discretion of the impounding agency, but shall not exceed*
21 *21 days from the date the last statement was presented.*

22 *(C) The statement of charges specified in subparagraph (A) and*
23 *any subsequent statements specified in subparagraph (B) shall*
24 *include a notice that the animal will be deemed abandoned if*
25 *charges are not paid within 14 days of service, and that payment*
26 *of fees does not guarantee the release of the animal, but does allow*
27 *the owner or keeper to retain an ownership interest in the animal.*

28 *(i) If the animal requires veterinary care and the humane society*
29 *or public agency is not assured, within 14 days of the seizure of*
30 *the animal, that the owner will provide the necessary care, the*
31 *animal shall not be returned to its owner and shall be deemed to*
32 *have been abandoned and may be disposed of by the seizing*
33 *agency. A veterinarian may humanely destroy an impounded*
34 *animal without regard to the prescribed holding period when it has*
35 *been determined that the animal has incurred severe injuries or is*
36 *incurably crippled. A veterinarian also may immediately humanely*
37 *destroy an impounded animal afflicted with a serious contagious*
38 *disease unless the owner or his or her agent immediately authorizes*
39 *treatment of the animal by a veterinarian at the expense of the*
40 *owner or agent.*

(j) ~~No~~An animal properly seized under this section or pursuant to a search warrant shall *not* be returned to its owner until the owner can demonstrate to the satisfaction of the seizing agency or hearing officer that the owner can and will provide the necessary care for the animal. *If the animal was seized pursuant to a search warrant, express approval of the court that issued the warrant or adjudicated the matter shall be obtained prior to the release of the animal.*

(k) (1) ~~In the case of cats and dogs, prior~~ Prior to the final disposition of any criminal charges, the seizing agency or prosecuting attorney may file a petition in a criminal action requesting that, prior to that final disposition, the court issue an order forfeiting the animal to the city, county, or seizing agency. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.

(2) Upon receipt of the petition, the court shall set a hearing on the petition. The hearing shall be conducted within 14 days after the filing of the petition, or as soon as practicable.

(3) The petitioner shall have the burden of establishing beyond a reasonable doubt that, even in the event of an acquittal of the criminal charges, the owner will not legally be permitted to retain the animal in question. If the court finds that the petitioner has met its burden, the court shall order the immediate forfeiture of the animal as sought by the petition.

(4) ~~Nothing in this subdivision is intended to~~ This section does not authorize a seizing agency or prosecuting attorney to file a petition to determine an owner's ability to legally retain an animal pursuant to paragraph (3) of subdivision (l) if a petition has previously been filed pursuant to this subdivision.

(l) (1) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the

1 seized or impounded animals. Each person convicted in connection
2 with a particular animal may be held jointly and severally liable
3 for restitution for that particular animal. The payment shall be in
4 addition to any other fine or sentence ordered by the court.

5 (2) The court may also order, as a condition of probation, that
6 the convicted person be prohibited from owning, possessing, caring
7 for, or residing with, animals of any kind, and require the convicted
8 person to immediately deliver all animals in his or her possession
9 to a designated public entity for adoption or other lawful disposition
10 or provide proof to the court that the person no longer has
11 possession, care, or control of any animals. In the event of the
12 acquittal or final discharge without conviction of the person
13 charged, if the animal is still impounded, the animal has not been
14 previously deemed abandoned pursuant to subdivision (h), the
15 court has not ordered that the animal be forfeited pursuant to
16 subdivision (k), the court shall, on demand, direct the release of
17 seized or impounded animals to the defendant upon a showing of
18 proof of ownership.

19 (3) Any questions regarding ownership shall be determined in
20 a separate hearing by the court where the criminal case was finally
21 adjudicated and the court shall hear testimony from any persons
22 who may assist the court in determining ownership of the animal.
23 If the owner is determined to be unknown or the owner is
24 prohibited or unable to retain possession of the animals for any
25 reason, the court shall order the animals to be released to the
26 appropriate public entity for adoption or other lawful disposition.
27 This section is not intended to cause the release of any animal,
28 bird, reptile, amphibian, or fish seized or impounded pursuant to
29 any other statute, ordinance, or municipal regulation. This section
30 shall not prohibit the seizure or impoundment of animals as
31 evidence as provided for under any other provision of law.

32 (m) It shall be the duty of all peace officers, humane-society
33 officers, and animal control officers to use all currently acceptable
34 methods of identification, both electronic and otherwise, to
35 determine the lawful owner or caretaker of any seized or
36 impounded animal. It shall also be their duty to make reasonable
37 efforts to notify the owner or caretaker of the whereabouts of the
38 animal and any procedures available for the lawful recovery of the
39 animal and, upon the owner's and caretaker's initiation of recovery
40 procedures, retain custody of the animal for a reasonable period

- 1 of time to allow for completion of the recovery process. Efforts to
- 2 locate or contact the owner or caretaker and communications with
- 3 persons claiming to be the owner or caretaker shall be recorded
- 4 and maintained and be made available for public inspection.

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